

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
May 8, 2009 Session

**KATHY MARIE POST v. RICHARD ALEXANDER POST**

**Appeal from the Circuit Court for Wilson County**  
**No. 3701 DV Clara W. Byrd, Judge**

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**No. M2008-01488-COA-R3-CV - Filed June 26, 2009**

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In this post-divorce dispute, husband challenges the trial court's action on wife's petition for contempt on a number of grounds. We find no merit in any of these challenges and affirm the decision of the trial court. We further find that wife is entitled to her attorney fees on appeal and remand for a determination of the amount of fees owed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

ANDY D. BENNETT, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and RICHARD H. DINKINS, JJ., joined.

Lance Brandon Mayes, Nashville, Tennessee, for the appellant, Richard Alexander Post.

Gloria Jean Evins, Lebanon, Tennessee, for the appellee, Kathy Marie Post.

**OPINION**

**FACTUAL AND PROCEDURAL BACKGROUND**

Kathy Marie Post ("Wife") and Richard Alexander Post ("Husband") were awarded a divorce based on irreconcilable differences by order dated December 5, 2001. They had been married for 29 years. The marital dissolution agreement incorporated into the final decree provides, in pertinent part, as follows:

**2. VEHICLES** - . . . Wife will retain the Extera [sic] automobile. Husband agrees to continue making the payments until that vehicle is paid in full. At that time husband agrees to sign title so that the vehicle will be solely in wife's name.

. . . .

4. **HEALTH INSURANCE** - The husband will be required to maintain wife's health insurance until her death, which he is allowed to do under the terms of his employment.

5. **CREDIT CARD DEBT** - Husband agrees that he will be responsible for all credit card debts existing at this time. Hereafter, the parties will each be responsible for his or her own credit card debt.

6. **ALIMONY** - The wife will not be requesting any alimony because of the funds she will be receiving from husband's retirement.

7. **RETIREMENT** - Husband will be receiving a lump sum buy out from his employer at the time of his retirement in January of 2002. Wife will receive one half of the net proceeds and husband will pay those to her on the same day that he receives those funds. Additionally, husband will be receiving approximately eighty thousand dollars (\$80,000) per year, or six thousand six hundred sixty six dollars (\$6666.00) per month after his retirement. The husband agrees that the wife will receive one half of those funds each month. They will be paid directly to her from husband[']s retirement, and she will be responsible for any taxes that are due in [sic] owing on her portion of the monies received. The wife's receipt of these funds will be in lieu of her receiving alimony from the husband. It is the intent of the parties that this amount will be paid until wife's death. It is further the parties intent that should husband die prior to wife that she would be the beneficiary of no less than her one half share of the retirement funds.

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10. **ENFORCEMENT** - In the event it becomes necessary for either party to institute legal proceedings to procure the enforcement of any provision of this Agreement, he or she shall also be entitled to a judgment for reasonable expenses, including attorney's fees, incurred in prosecuting the action.

On June 26, 2002, the final decree was amended to provide that Husband's civil service retirement annuity was to be divided equally between Husband and Wife during Husband's lifetime. Upon Husband's death, Wife was to receive the survivor annuity.

On August 5, 2005, Wife filed a petition for contempt against Husband alleging that Husband had failed to comply with the final divorce decree by (1) failing to maintain payments on the Xterra, resulting in the repossession of the car and Wife's purchase of a vehicle of lesser value; (2) failing to make credit card payments and listing marital debts in his bankruptcy action, resulting in Wife needing to hire counsel to represent her in the bankruptcy proceedings; (3) failing to pay for Wife's health insurance, thereby forcing Wife to obtain health insurance at her own expense; (4) failing to

provide Wife with documentation to prove that he had paid her one-half of his lump sum retirement payment received in January 2002.

The contempt petition was heard, by agreement of the parties, on January 30, 2007. Husband did not appear at the hearing but was represented by counsel. Although the record on appeal contains exhibits entered at the hearing, the record does not include a transcript of the hearing. The court entered two orders dated February 22, 2007, one addressing the vehicle, insurance, and attorney fees, and another addressing the annuity payments, employee buyout, credit card debt, and future insurance premiums. Finding Husband to be in willful contempt of the final decree, the court awarded Wife judgments in the following amounts:

1. \$19,180.61 for insurance premiums paid by Wife through January 30, 2007 and prejudgment interest of \$4,308.87 for a total of \$23,489.48.
2. \$10,494.68 for a replacement vehicle due to the repossession of the Xterra and prejudgment interest from June 20, 2003 through January 20, 2007 of \$4,625.28 for a total of \$15,119.96.
3. \$3,442.50 for attorney fees to defend the bankruptcy action plus prejudgment interest from the denial of discharge of \$973.18 for a total of \$4,415.68.
4. \$3,489.50 for attorney fees incurred to enforce the final decree.

The court reserved judgment on the amounts owed by Husband on the annuity and lump sum buyout and gave Husband thirty days to provide the court with his 2002 tax return. Husband was ordered to reimburse Wife on a monthly basis for health insurance premiums deducted from her annuity payments beginning from February 2007 or arrange for the premiums to be deducted from his annuity payments. The court further ordered Husband to satisfy all of the listed creditors and present proof that all the debts had been satisfied or provide Wife with \$53,272 so that she could extinguish the debts.

On March 23, 2007, Husband filed a “Motion to Strike Portions of the Order and to Alter or Amend the Judgment.” Husband requested that the court strike portions of the order awarding prejudgment interest. Husband further asserted that the order should be modified with respect to the court’s denial of Husband’s motion for a continuance, to clarify that the criminal contempt petition was dismissed with prejudice, and to give Husband credit for \$23,465.00 paid by Husband to Wife. Wife opposed the motion and requested attorney fees for having to respond to the motion. Husband’s motion was to be heard on April 20, 2007, but the court continued the matter because Husband was not present. The court’s order continuing the matter was entered on May 25, 2007. At the hearing on May 25, 2007, the court denied Husband’s motions and awarded Wife additional attorney fees of \$787.50. This order was not entered until June 25, 2007.

At this point, things get a little confusing. On June 22, 2007, Wife filed a motion to amend, purportedly asking the court to amend its May 25, 2007 order. In her motion, Wife sought to clarify a previous statement concerning the amount of her attorney fees, stating that the “\$787.50 number [provided to the court] did not [include] additional work after that court appearance.” Wife further asserted that she was entitled to an additional \$2,900.50 plus interest for annuity payments and noted that the court did not address the issue of the lump sum employee buyout in the relevant order of February 22, 2007. Thus, although Wife’s motion seeks modification of the May 25, 2007 order, the order continuing the hearing on Husband’s motion to alter or amend, the grounds argued by Wife are not pertinent to that order. Rather, it appears that Wife’s June 22, 2007 motion to amend actually addressed itself to the court’s decision on Husband’s motion to strike and to alter or amend, which was heard on May 25, 2007, but the order was not entered until June 25, 2007.<sup>1</sup>

Wife’s motion to amend was heard by the court on July 11, 2007. In an order entered on August 3, 2007, the court provided that the May 25, 2007 order<sup>2</sup> would be amended to give Wife additional attorney fees in the amount of \$2,450.00 for services rendered through May 25, 2007. The court reserved the issues of whether Husband had paid Wife her portion of the annuity and the lump sum payment.<sup>3</sup>

After a final hearing on May 29, 2008, the court entered an order resolving all outstanding issues. The order includes detailed findings concerning the annuity and lump sum buyout, which will be set out below as relevant. Based upon its calculations concerning the annuity, lump sum buyout, and sums paid by Husband to Wife, the court awarded Wife an additional judgment of \$15,542.58 as well as a judgment for additional attorney fees incurred since the January 30, 2007 hearing in the amount of \$7,452.75. This appeal followed.

#### ISSUES ON APPEAL

Husband raises a number of issues on appeal.<sup>4</sup> He challenges the trial court’s denial of his request for a continuance. Husband asserts that the trial court erred in awarding certain amounts to Wife for health insurance premiums, annuity payments, and a lump sum buyout. Husband also argues that the trial court erred in awarding prejudgment interest and in its award of attorney fees to Wife. Wife urges this court to find Husband’s appeal frivolous and to award her attorney fees on appeal.

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<sup>1</sup>This interpretation is supported by the following statement of counsel for Wife at a hearing on May 29, 2008: “We had another hearing on May the 25<sup>th</sup> and there was an order entered in that which was actually filed – well, it says it was filed May the 25<sup>th</sup> but it was not; that’s the wrong date. It was actually filed . . . June the 25<sup>th</sup>.”

<sup>2</sup>For the reasons previously discussed, we believe the intent was to modify the order entered on June 25, 2007, which contains the court’s rulings from the May 25, 2007 hearing.

<sup>3</sup>Husband filed a notice of appeal on July 3, 2007, but the appeal was dismissed without prejudice by this court.

<sup>4</sup>Husband does not challenge the trial court’s finding that he was in willful contempt of the final divorce decree.

## STANDARD OF REVIEW

We review the trial court's findings of fact de novo with a presumption of correctness unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d). Where the trial court did not make findings of fact, we must "conduct our own independent review of the record to determine where the preponderance of the evidence lies." *Brooks v. Brooks*, 992 S.W.2d 403, 405 (Tenn. 1999). We review questions of law de novo with no presumption of correctness. *Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 628 (Tenn. 1999).

A trial court's decision on a motion for a continuance is reviewed under an abuse of discretion standard. *Barber & McMurry, Inc. v. Top-Flite Dev. Corp., Inc.*, 720 S.W.2d 469, 471 (Tenn. Ct. App. 1986). The awarding of prejudgment interest is likewise within the discretion of the trial court. *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 927 (Tenn. 1998). There has been an abuse of discretion "when the trial court reaches a decision against logic that causes a harm to the complaining party or when the trial court applies an incorrect legal standard." *Riley v. Whybrew*, 185 S.W.3d 393, 399 (Tenn. Ct. App. 2005). The trial court's decision will be upheld "so long as reasonable minds can disagree as to the propriety of the [trial court's] decision." *Id.* (quoting *State v. Scott*, 33 S.W.3d 746, 751 (Tenn. 2000)).

## ANALYSIS

### I.

#### Motion to continue

Husband asserts that the trial court abused its discretion in denying his request for a continuance. Husband's argument appears to refer to an oral motion for a continuance made by Husband's counsel at the January 30, 2007 hearing. We find no abuse of discretion in the trial court's denial of the motion.

Pursuant to an agreed order entered on September 22, 2006, Wife's petition for contempt was set to be heard on January 30, 2007. The record does not include a transcript of the January 30, 2007 hearing. The record does indicate that Husband failed to appear at the hearing but was represented by counsel. The record also includes a letter dated January 29, 2007, from Lockheed Martin, Husband's employer, stating that Husband's presence was "essential to the success of our mission" and that his presence was required until "successful acceptance of our new system," which was planned for February 19, 2007. It is significant that, despite the parties' agreement to a January 30, 2007 hearing date over four months earlier, Husband did not file a written motion to continue as contemplated under Tenn. R. Civ. P. 7.02. Moreover, without a transcript of the hearing or any written findings in the trial court's orders, this court has no basis upon which to find error in the trial court's exercise of its broad discretion.

## II.

### Amount of damages

Husband challenges the trial court's damages awards for the lump sum buyout, annuity payments, and insurance premiums. We will examine the court's findings and the evidence regarding the lump sum buyout and the annuity payments together.

#### A. Lump sum buyout and annuity

There is no dispute that, pursuant to the terms of the marital dissolution agreement, Wife was entitled to receive half of Husband's lump sum buyout and half of his annuity payments. Both parties testified that, at the time when they entered into the MDA, they expected Husband to receive a lump sum buyout of approximately \$25,000. Husband testified that he never received a lump sum buyout. His 2002 tax return shows income of \$31,729.06. Husband never provided the court with a W-2 for this income but testified that the payment in January 2002 was for his December 2001 wages and vacation time.

The court made the following findings with respect to the lump sum buyout and annuity:

Based upon the Marital Dissolution Agreement, Mrs. Post waived alimony in reliance on receiving husband's eighty thousand dollar (\$80,000) pension and one-half of an anticipated buyout of twenty-five thousand dollars (\$25,000);

Based on the proof from the United States Office of Personnel Management Civil Service for 2002, the total gross annuity paid out was sixty three thousand eight hundred sixty three dollars and ten cents (\$63,863.10). Mrs. Post, under the Marital Dissolution Agreement was entitled to one-half the gross annuity or thirty one thousand nine hundred thirty dollars and fifty five cents (\$31,931.55). She received eight thousand seven hundred eighty eight dollars and fifty cents (\$8,788.50) from the government, therefore Mr. Post owed her the balance of twenty three thousand one hundred forty three dollars and five cents (\$23,143.05);

Both Mr. and Mrs. Post anticipated a lump sum buyout of approximately twenty five thousand dollars (\$25,000);

Relying on a notice from the IRS to Mr. Post and the testimony of Mr. Post, the thirty one thousand seven hundred twenty nine dollars and six cents (\$31,729.06) received in January was income for service prior to January 02 not proceeds from the anticipated buyout. The court finds that this thirty one thousand seven hundred twenty nine dollars and six cents (\$31,729.06) should have been divided equally. Mrs. Post should receive fifteen thousand eight hundred sixty four dollars and fifty three cents (\$15,864.53) from these funds;

Adding the twenty three thousand one hundred forty three dollars and five cents (\$23,143.05) in paragraph 3 above to the fifteen thousand eight hundred sixty four dollars and fifty three cents (\$15,864.53) in paragraph 5 above results in a total of thirty nine thousand seven dollars and fifty eight cents (\$39,007.58). Subtracting the twenty three thousand four sixty five dollars (\$23,465) Mr. Post claimed as payment of alimony from the thirty nine thousand seven dollars and fifty eight cents (\$39,007.58) leaves a balance owed to Mrs. Post of fifteen thousand five hundred forty two dollars and fifty eight cents (\$15,542.58).

Husband asserts that, in calculating the annuity amount due Wife, the trial court erroneously failed to give him credit for \$6,026.25 in annuity payments received by Wife from October 2002 through December 2002. This argument is based upon a mathematical error and is without merit. The trial court gave Husband credit for \$8,788.50 in annuity payments received by Wife from October through December 2002. Husband is arguing that he should receive credit for \$8,788.50 paid to Wife by the Office of Personnel Management in 2002 as well as for the October to December 2002 annuity payments he erroneously calculated to total \$6,026.25. These are the same payments, totaling \$8,788.50, for which the trial court did indeed give Husband credit.

Husband's main argument is that the trial court erred in ordering him to pay Wife half of the payment of \$31,729.06 he received from his employer in January 2002. Husband testified that, contrary to the contemplation of the parties at the time when they entered into the marital dissolution agreement, he never received a lump sum buyout in January 2002. As noted by the trial court in its order, Husband asserted that the payment of \$31,729.06 was for wages from December 2001 as well as vacation pay. However, despite repeated requests by the court for a W-2 for the \$31,729.06 claimed as income on his 2002 tax return, Husband never produced such documentation to show the nature of that income. The court specifically found that Wife had relied on the receipt of money from the lump sum buyout and annuity in deciding not to seek alimony. This finding is supported by the language of the marital dissolution agreement. Although Husband claimed that the \$31,729.06 did not represent a lump sum buyout, the court determined that Wife was entitled to half of that payment.

In finding Wife to be entitled to half of the \$31,729.06, the trial court implicitly rejected Husband's testimony on that issue. We accord great deference to a trial court's determinations regarding credibility. *Wells v. Tenn. Bd. of Regents*, 9 S.W.3d 779, 783 (Tenn. 1999). The record reflects several bases upon which the trial court may have questioned Husband's credibility. While Husband adamantly insisted at the hearing on May 25, 2007, that he did not receive any annuity payments until October or November 2002, the actual annuity records produced at the May 2008 hearing show that Husband began receiving annuity payments in January 2002 while Wife did not begin receiving payments until October 2002. Husband did not claim any annuity payments on his 2002 tax return, and the IRS amended the tax return to reflect \$63,863.00 in unreported annuity income. Husband erroneously claimed \$23,465 in alimony payments on his 2002 tax return; he later had to correct his tax return and pay taxes on the \$23,465.

The trial court's decision is consistent with the terms of the marital dissolution agreement, and the evidence does not preponderate against the trial court's findings.

#### B. Health insurance premiums

The marital dissolution agreement requires Husband to "maintain wife's health insurance until her death, which he is allowed to do under the terms of his employment." The proof shows that Husband executed the documents necessary to entitle Wife to continue receiving health insurance benefits through his employer after the divorce, but the premiums were deducted from Wife's annuity payments once she started receiving them in October 2002. The trial court awarded Wife a judgment for \$19,180.61 for insurance premiums she paid through January 30, 2007 and ordered Husband to reimburse her for future premiums.

Husband urges this court to interpret the marital dissolution agreement to require him to allow Wife to continue to receive health insurance benefits through his employer but at her own cost. He testified at the hearing that this was his understanding of their agreement. A marital dissolution agreement is essentially a contract, and pursuant to the rules of construction, we ascertain the intent of the parties from the natural and ordinary meaning of the contractual language. *Barnes v. Barnes*, 193 S.W.3d 495, 498 (Tenn. 2006); *Johnson v. Johnson*, 37 S.W.3d 892, 896 (Tenn. 2001). According to *Black's Law Dictionary*, the definitions of "maintain" include "[t]o continue (something)," "[t]o continue in possession of (property, etc.)," and "[t]o support (someone) financially; esp., to pay alimony to." BLACK'S LAW DICTIONARY 973 (8<sup>th</sup> ed. 2004). Based upon the terms of the marital dissolution agreement, we interpret Husband's obligation to "maintain" health insurance for Wife as requiring him to pay for her health insurance. The interpretation proposed by Husband conflicts with the natural and ordinary meaning of the language used in the marital dissolution agreement.

### III.

#### Prejudgment interest

Husband argues that the trial court erred in awarding a total of \$10,070.13 in prejudgment interest. This total represents prejudgment interest on three items: (1) damages to reimburse Wife for insurance premiums she paid through January 30, 2007, because of Husband's failure to pay for her insurance as provided in the MDA; (2) damages to reimburse Wife for money she paid for a vehicle to replace the Xterra, which was repossessed due to Husband's failure to make payments on the vehicle as provided in the MDA; and (3) damages to reimburse Wife for attorney fees she incurred to defend the bankruptcy action filed by Husband.

While acknowledging that the award of attorney fees is within the discretion of the trial court, Husband argues that the trial court abused its discretion in this case for four reasons: (1) that the amount to which Wife was entitled was not fixed at the time when the parties entered into the MDA, (2) that Wife did not specifically plead prejudgment interest in her petition for contempt, (3) that



Wife “delayed a significant number of years [in] bringing this action,” and (4) that the proof does not establish any harm to Wife as a result of not having the funds at issue. We have concluded that each of these arguments is without merit.

Husband makes the statement that “Tennessee’s courts have tended to decline to award prejudgment interest if the amount of the underlying obligation is uncertain or if the existence of the underlying obligation is disputed on reasonable grounds.” Similar statements can be found in Tennessee caselaw. See *Mitchell v. Mitchell*, 876 S.W.2d 830, 832 (Tenn. 1994). However, in *Myint v. Allstate Insurance Company*, our Supreme Court expressly overruled cases suggesting that prejudgment interest could not be awarded when a claim was “reasonably disputed.” *Myint*, 970 S.W.2d 920, 928 n.7 (Tenn. 1998). The Court adopted a more flexible approach with regard to the award of prejudgment interest:

[W]e find that if the existence or amount of an obligation is certain, this fact will help support an award of prejudgment interest as a matter of equity. . . . The converse, however, is not necessarily true. The uncertainty of either the existence or amount of an obligation does not *mandate* a denial of prejudgment interest, and a trial court’s grant of such interest is not automatically an abuse of discretion, provided the decision was otherwise equitable. The certainty of the plaintiff’s claim is but one of many nondispositive facts to consider when deciding whether prejudgment interest is, as a matter of law, equitable under the circumstances.

*Id.* at 928. In this case, the MDA expressly states that Husband is to provide Wife with health insurance, make the remaining payments on the Xterra, and pay the marital credit card debts. The existence and amount of damages resulting from his failure to fulfill these obligations are not uncertain.

Husband next points out that Wife did not specifically request prejudgment interest in her petition for contempt. Contrary to Husband’s assertion, Tennessee law does not require her to do so. Husband relies upon Tenn R. Civ. P. 9.07 and *Mitchell v. Mitchell* for the proposition that special damages must be plead specifically. See *Mitchell*, 876 S.W.2d at 831. We do not consider prejudgment interest to constitute an item of special damage in this case. In *Mitchell*, a case involving an award of prejudgment interest on the balance owed by a former husband under a property settlement agreement, the court recognized that the “[l]oss of use of funds due is the necessary result of the failure to pay an obligation according to its terms.” *Id.* at 832. Interest is the “usual means of compensating for this necessary result.” *Id.* Noting that “the allowance of prejudgment interest under such circumstances is ‘familiar and almost commonplace,’” the court in *Mitchell* concluded that the recovery of prejudgment interest in that case did not require special pleading. *Id.* (quoting *Deas v. Deas*, 774 S.W.2d 167, 170 (Tenn. 1989)). The same reasoning applies here.

Husband also asserts that prejudgment interest is not equitable in this case on the ground that Wife delayed unreasonably in bringing her contempt action. It has been stated that prejudgment

interest may be inappropriate “when the party seeking prejudgment interest has been so inexcusably dilatory in pursuing a claim that consideration of a claim based on loss of use of the money would have little weight” or when the party seeking prejudgment interest “unreasonably delayed the proceedings after suit was filed.” *Scholz v. S.B. Int’l, Inc.*, 40 S.W.3d 78, 83 (Tenn. Ct. App. 2000). Husband asserts that Wife was aware that insurance premiums were being withdrawn from her retirement funds in October 2002. He further asserts that, “[i]n regards to the vehicle, that occurred on June 22, 2003 and approximately August 16, 2004.” Presumably, Husband is referring to the repossession of the Xterra. These facts alone do not establish that Wife acted unreasonably in waiting to file her contempt petition until August 2005.

Husband’s final argument is that Wife has not proven any detrimental effect of being deprived of the disputed funds. We have previously rejected arguments that a party seeking prejudgment interest must show loss of the use of money or evidence of its earning power. *See Mabey v. Maggas*, No. M2006-02689-COA-R3-CV, 2007 WL 2713726, \*9 (Tenn. Ct. App. Sept. 18, 2007). We similarly conclude that there is no requirement that a party seeking prejudgment interest show harm from being deprived of the disputed money. Awards of prejudgment interest are inherently “based on the recognition that a party is damaged by being forced to forego the use of its money over time.” *Scholz*, 40 S.W.3d at 82.

We conclude that the trial court acted within its discretion in awarding Wife prejudgment interest.

#### IV.

##### Attorney fees

Husband does not dispute that, under the terms of the marital dissolution agreement, the award of attorney fees was within the trial court’s discretion.<sup>5</sup> Husband asserts that the trial court abused its discretion in this case. We find no abuse of discretion.

Husband objects to the trial court’s failure to cite any factors or legal standards applied in its attorney fee award and to the court’s reliance upon the affidavits of Wife’s counsel in arriving at the fee amount. Trial courts are not generally required to explain discretionary decisions. *See BIF v. Serv. Constr. Co., Inc.*, No. 87-136-II, 1988 WL 72409, \*3 n.5 (Tenn. Ct. App. July 13, 1988). Under the abuse of discretion standard, the trial court’s decision will be upheld unless it affirmatively appears that the trial court “reaches a decision against logic that causes a harm to the complaining party or when the trial court applies an incorrect legal standard.” *Riley*, 185 S.W.3d at 399. We see

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<sup>5</sup>The parties also cite Tenn. Code Ann. § 36-5-103(a)(3), which states: “The plaintiff spouse may recover from the defendant spouse . . . reasonable attorney fees incurred in enforcing any decree for alimony and/or child support . . . both upon the original divorce decree hearing and at any subsequent hearing, which fees may be fixed and allowed by the court, before whom such action or proceeding is pending, in the discretion of such court.” Since, in this case, Wife did not receive alimony under the MDA (because she was receiving a portion of Husband’s retirement instead) and since the MDA clearly authorizes the award of attorney fees, we decline to address the applicability of this provision.

no evidence that the trial court abused its discretion. It is worth noting that, at all three hearings for which the record includes a transcript, Husband failed to seek further proof on the amount of attorney fees requested. At the July 11, 2007 hearing, Husband objected to the court's decision to correct its earlier order due to an error in the Wife's attorney fee affidavit but did not otherwise rebut the reasonableness of the corrected affidavit.

#### CONCLUSION

The judgment of the trial court is affirmed in all respects. We hereby award Wife her reasonable attorney fees on appeal and remand the matter to the trial court for a determination of the appropriate amount. Costs of appeal are assessed against the appellant, for which execution may issue if necessary.

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ANDY D. BENNETT, JUDGE